

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BERNARD WAITHAKA, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

AMAZON.COM, INC. and AMAZON
LOGISTICS, INC.,

Defendants.

CIVIL ACTION NO. 4:18-CV-40150-TSH

**DEFENDANTS' MOTION TO COMPEL ARBITRATION OR,
IN THE ALTERNATIVE, TO TRANSFER OR STAY**

Defendants Amazon.com, Inc. and Amazon Logistics, Inc. (collectively, “Amazon” or “Defendants”), hereby move to compel the claims of Plaintiff Bernard Waithaka (“Waithaka” or “Plaintiff”) to individual arbitration. Plaintiff’s claims fall squarely within the scope of his arbitration agreement, which is contained in his Independent Contractor Terms of Service (“TOS”). The TOS is governed by the Federal Arbitration Act (“FAA”) and applicable federal law, which mandates “a liberal federal policy favoring arbitration.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346 (2011). Even if the FAA did not apply, the arbitration agreement is fully enforceable under state law. Accordingly, the Court should grant Amazon’s motion to compel individual arbitration.

In the alternative, if the Court denies Amazon’s motion to compel, it should transfer Waithaka’s claims to the Western District of Washington under the first-to-file rule or under 28 U.S.C. § 1404(a), where they can be consolidated with an action involving parallel claims currently pending. Because of the substantial overlap in parties, issues, and allegations between this case and the case already pending before Judge Coughenour, the Court should transfer and consolidate

the instant action with the earlier-filed action. Alternatively, the Court should stay this case pending the disposition of the existing action to reduce inefficiency and the risk of inconsistent rulings.

For the foregoing reasons and those set forth in the accompanying Memorandum of Law and accompanying declarations, Amazon respectfully requests that the Court compel Waithaka's claims to individual arbitration and stay this action or, in the alternative, transfer Waithaka's claims to the Western District of Washington, or stay this action pending the disposition of the existing *Rittmann* action

**AMAZON.COM, INC. and
AMAZON LOGISTICS, INC.,**

By their attorneys,

/s/ Elizabeth M. Bresnahan
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Dated: April 2, 2019

RULE 7.1(A)(2) CERTIFICATION

I, Elizabeth M. Bresnahan, hereby certify on behalf of Defendants that we have in good faith conferred with counsel for Plaintiff in advance of this motion and have attempted in good faith to resolve or narrow the issues raised in this motion. No issues raised in this motion have been resolved or narrowed.

/s/ Elizabeth M. Bresnahan
Elizabeth M. Bresnahan

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2019, the foregoing document was filed through the ECF system and sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Elizabeth M. Bresnahan
Elizabeth M. Bresnahan